

**In the  
Indiana Supreme Court**

STATE OF INDIANA <i>ex rel.</i>	)	Supreme Court Cause No.
Adrian D. KIRTZ,	)	18S00-0909-OR-411
Relator,	)	
	)	
v.	)	
	)	
THE DELAWARE CIRCUIT COURT	)	
NO. 5 and THE HONORABLE	)	
THOMAS A. CANNON, JR., as Judge	)	
thereof,	)	Trial Court No.
Respondents.	)	18C05-0701-FA-1



PERMANENT WRIT OF MANDAMUS AND PROHIBITION

Relator filed a petition for relief under the rules governing original actions. He alleges that Respondents have exceeded their jurisdiction and failed to act when under a duty to act by appointing J. A. Cummins as Special Prosecuting Attorney in the pending criminal case against Relator and by overruling Relator's objection to that appointment. The Special Prosecuting Attorney and the Attorney General of Indiana filed briefs opposing issuance of the writ.

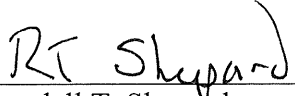
Each Justice has had an opportunity to review the petition, the accompanying application papers, and the briefs opposing issuance of the writ. The Court has met in conference and discussed Relator's request for relief. All five Justices have voted to grant Relator's petition.

Accordingly, the Court directs Respondents, the Delaware Circuit Court No. 5 and the Honorable Thomas A. Cannon, Jr., as Judge thereof, to vacate the order appointing J. A. Cummins as Special Prosecuting Attorney and to appoint a different person to serve as Special Prosecuting Attorney pursuant to Indiana Code Section 33-39-1-6.

The Court takes under advisement whether to issue later an order or opinion explaining the reasons for granting this writ. In light of the scheduled trial date approaching, the present order serves as the permanent writ, effective immediately. Motions to reconsider or petitions for rehearing are not allowed. Ind. Original Action Rule 5(C).

The Clerk is directed to send a certified copy of this order to the Hon. Thomas A. Cannon, Jr., Judge, Delaware Circuit Court No. 5, 100 W. Washington Street, Muncie, IN 47305; J. A. Cummins, 10012 E. CR 500 South, Selma, IN 47383; Jacob P. Dunnuck, 114 S. Walnut Street, Muncie, IN 47305; Mark McKinney, Prosecutor, 100 W. Main Street, Suite 312, Muncie, IN 47305; and Gregory F. Zoeller, Attorney General of Indiana. The Clerk is also directed to post this order to the Court's website.

Done at Indianapolis, Indiana, this 16th day of October, 2009.

  
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Randall T. Shepard  
Chief Justice of Indiana

All Justices concur.